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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Jose Angel Acosta,
Petitioner,
v.
Unknown Monarez,
Respondent.

No. CV-23-02395-PHX-JAT (MTM)

ORDER

Petitioner Jose Angel Acosta, who is confined in the Federal Correctional Institution-Phoenix, filed a pro se Petition Under 28 U.S.C. § 2241 for Writ of Habeas Corpus by a Person in Federal Custody (Doc. 1) and paid the filing fee.

I. Petition

In his Petition, Petitioner names Warden Monarez as Respondent. Petitioner raises one ground for relief under the First Step Act, in which he contends he was “locked up” during the COVID-19 pandemic and has done as much programming as the pandemic allowed. Petitioner asserts that he is on the waiting list for Evidence-Based Recidivism Reduction (EBRR) programs, he has a low risk of recidivism, and he is in the Residential Drug Abuse Program (RDAP). Petitioner contends he has done everything in his power that the Federal Bureau of Prisons “let [him] do” and Congress mandated that all prisoners get credits for being on the waiting list for EBRR programs.

II. Discussion

Under the First Step Act, “A prisoner . . . who successfully *completes* evidence-

1 based recidivism reduction programming or productive activities, shall earn time credits”
 2 at a rate of “10 days of time credits for every 30 days of successful participation in
 3 evidence-based recidivism reduction programming or productive activities” with the
 4 possibility to earn an additional 5 days per 30 days of successful participation. 18 U.S.C.
 5 § 3632(d)(4)(A) (emphasis added). “Successful participation” requires Federal Bureau of
 6 Prisons (BOP) staff to determine that a prisoner has participated in the EBRR programs
 7 that BOP has recommended based on the prisoner’s individualized risk and needs
 8 assessment and has complied with the requirements of each particular EBRR program. 28
 9 C.F.R. § 523.41(c)(2); *see Pierce v. LeMaster*, No. 24-7-DLB, 2024 WL 439447, at *1
 10 (E.D. Ky. Jan. 29, 2024) (stating that “generally speaking ‘successful participating’
 11 requires, at a minimum, actual participation”). “Temporary operational or programmatic
 12 interruptions authorized by the Bureau that would prevent an inmate from participation in
 13 EBRR programs . . . will not ordinarily affect an eligible inmate’s ‘successful participation’
 14 for the purposes of FSA Time Credit eligibility.” 28 C.F.R. § 523.41(c)(3).

15 Thus, prisoners may earn First Step Act Time Credits for the *completion* of
 16 approved EBRR Programs. Nothing in the First Step Act entitles Petitioner to First Step
 17 Act Time Credits merely for being on the waiting list for EBRR Programs, regardless of
 18 restrictions on programming due to the COVID-19 pandemic.

19 For the foregoing reasons, the Court will dismiss the Petition and this case.

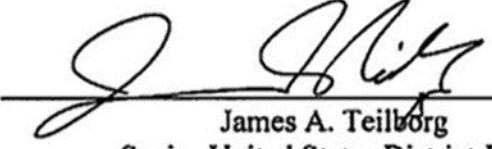
20 **IT IS ORDERED:**

21 (1) Petitioner’s Petition Under 28 U.S.C. § 2241 (Doc. 1) and this case are
 22 **dismissed.**

23 (2) The Clerk of Court must enter judgment accordingly and close this case.

24 Dated this 26th day of March, 2024.

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James A. Teilborg
 Senior United States District Judge